

AMENDED IN SENATE APRIL 22, 2003

**SENATE BILL**

**No. 202**

**Introduced by Senator Romero**

February 13, 2003

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An act to add Article 9.45 (commencing with Section 25207.14) to Chapter 6.5 of Division 20 of, and to repeal Section 25143.1.5 of, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 202, as amended, Romero. Wood waste: preservatives.

(1) Existing law regulates the control of hazardous waste, but exempts from the hazardous waste control laws, wood waste treated with a preservative that is exempt from regulation under the federal Resource Conservation and Recovery Act of 1976, as amended (RCRA), if the wood waste is disposed of in a specified portion of a solid waste landfill and meets other specified requirements. A violation of the state's hazardous waste control laws is a crime.

This bill would repeal the exemption for wood waste and instead would prohibit any person, on and after January 1, 2005, from using chromated copper arsenate (CCA), *or* pentachlorophenol (penta) ~~or creosote~~ to treat wood products or manufacturing a wood product treated with those substances. The bill would provide, on and after January 1, 2005, that wood waste containing any measurable level of CCA, *or* penta, ~~or creosote~~ is a hazardous waste for purposes of the hazardous waste control laws. The bill would require any person disposing of that wood waste to dispose of that waste pursuant to the hazardous waste control laws, thereby imposing a state-mandated local program by creating a new crime.

The bill would authorize a person to dispose of wood waste in accordance with the regulations adopted by the Department of Toxic Substances Control governing universal waste. *The bill would require the department, in consultation with the California Integrated Waste Management Board and the State Water Resources Control Board, to adopt regulations that require the wood waste to be disposed of in a manner fully protective of human health and the environment. The bill would specify that its provisions do not require a product containing CCA or penta to be removed before the end of that product's existing lifespan, but would require, when the product is replaced, that the removed product is managed as a hazardous waste and that the replacement for that product does not contain CCA or penta.*

*The bill would authorize a local agency or state agency or department to petition the California Environmental Protection Agency for a waiver from the requirements of the bill, which would be valid for 5 years from the date that the waiver is issued, if the California Environmental Protection Agency makes a specified finding.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature hereby finds and declares all of  
2 the following:

3 (a) The process of treating wood with preservatives creates  
4 enormous environmental and public health hazards. Wood  
5 treatment plants often become hazardous substance release or  
6 "Superfund sites" listed under the federal Comprehensive  
7 Environmental Response, Compensation, and Liability Act of  
8 1980, as amended (42 U.S.C. Sec. 9601 et seq.) due to the  
9 contamination of the surrounding environment by wood  
10 preservative chemicals.

11 (b) (1) Chromated Copper Arsenate (CCA) has been shown to  
12 cause cancerous tumors (oncogenicity), and genetic damage



(mutagenicity), as well as displaying fetotoxicity and other reproductive effects.

(2) Both arsenic and hexavalent chromium, two of the three primary ingredients in CCA-treated wood, are classified by the United States Environmental Agency as known human carcinogens. Of the top 275 hazardous substances listed by the Agency for Toxic Substances and Disease Registry as being present at Superfund sites in 1997 based on frequency, toxicity, and human exposure, arsenic and hexavalent chromium were ranked first and sixteenth respectively. Currently, 51 wood preservation sites are on the Superfund National Priorities List (42 U.S.C. Sec. 9605(a)(8)(B)) because of contamination from CCA. Scientific studies demonstrate that arsenic and chromium leach from treated wood into the environment, posing a threat to humans and other life forms.

(3) The continued use of CCA to treat wood therefore poses an imminent danger to public health and the environment.

(c) (1) Because of concerns about its health and environmental hazards, pentachlorophenol has been totally banned or restricted in many countries throughout the world. The United Nations Environment Program classifies pentachlorophenol and its contaminants as “persistent organic pollutants.” Hexachlorobenzene (HCB), dioxins, and polychlorinated dibenzofurans (furans), which are some of pentachlorophenol’s carcinogenic contaminants, are restricted by the Stockholm Convention on Persistent Organic Pollutants signed by the United States in 2001.

(2) Pentachlorophenol and its contaminants are endocrine disrupters. Pentachlorophenol interferes with hormone function by mimicking the female hormone estrogen and interfering with the reproductive system, resulting in malformed sexual organs, and cancer of sensitive organs.

(3) Pentachlorophenol and its contaminants of dioxins, furans and hexachlorobenzene, evidences oncogenicity, teratogenicity (causes birth defects), and fetotoxicity.

(4) The continued use of pentachlorophenol to treat wood poses an imminent danger to public health and the environment.

~~(d) (1) Of the three kinds of creosote (coal tar creosote, beechwood creosote, and creosote bush resin), the most common type is coal tar creosote. Coal tar creosote results from~~

1 high-temperature treatment of coal and, according to the Agency  
2 for Toxic Substances and Disease Registry (ATSDR), coal-tar  
3 creosote is the most widely used wood preservative in the United  
4 States.

5 (2) Creosote is a complex mixture of many chemicals. About  
6 300 chemicals have been identified in coal-tar creosote, but there  
7 could be 10,000 other chemicals present in the mixture. Three of  
8 the classes of chemicals found in coal-tar creosote that are known  
9 to cause harmful health effects are polycyclic aromatic  
10 hydrocarbons (PAHs), phenol, and cresols.

11 (3) In 1999, the Commission of the European Union (EU)  
12 banned the sale and use of creosote.

13 (4) According to the National Institutes of Health (NIH), in  
14 animal studies, benzopyrene induces malignant and benign  
15 forestomach tumors, mammary tumors, lung adenomas, skin  
16 carcinomas and papillomas, tracheal papillomas and carcinomas,  
17 squamous cell carcinomas of the lung, lung tumors,  
18 tracheobronchial tumors, squamous carcinomas of the lung, local  
19 sarcomas, hepatomas and lung adenomas, abdominal  
20 fibrosarcomas, mammary and uterine carcinomas, mammary  
21 carcinomas, local tumors, and an increased the incidence of lung  
22 adenomas and initiated skin carcinogenesis in the offspring.

23 (5) Germany banned creosote in 1991 due to its benzopyrene  
24 content. In 1998, Germany submitted a study to a panel of  
25 scientists advising the EU, and the panel found there is sufficient  
26 evidence that creosote does cause cancer.

27 (6) Because creosote displays oncogenicity and mutagenicity,  
28 the continued use of creosote to treat wood poses an imminent  
29 danger to public health and the environment.

30 (e) —

31 (d) (1) At least 65 percent of utilities are in the habit of giving  
32 away discarded utility poles that continue to leach toxic chemicals  
33 into the environment to the public.

34 (2) The United States Environmental Protection Agency has  
35 calculated that children face a 220 times increase in the risk of  
36 cancer from exposure to soil contaminated with  
37 pentachlorophenol leaching out of utility poles.

38 (f) (1) For

39 (e) (1) For the purposes of implementing the federal Resource  
40 Conservation and Recovery Act of 1976, as amended (42 U.S.C.

1 Sec. 6901 et seq.; RCRA), the United States Environmental  
2 Protection Agency uses the Toxicity Characteristic Leaching  
3 Procedure or “TCLP,” test. The ~~TCLP~~ *TCLP* test is intended to  
4 simulate conditions in a landfill and, in the absence of the special  
5 exemption, if a material fails the TCLP test, RCRA requires that  
6 material to be disposed of in the same manner as other hazardous  
7 waste, using lined landfills designed to prevent infiltration of  
8 water and release of contaminated leachate into the environment.

9 ~~(2) Arsenical-treated wood fails the TCLP test for the leaching~~  
10 *(2) Arsenically-treated wood fails the TCLP test for the*  
11 *leaching of toxic material, but because arsenical-treated*  
12 *arsenically-treated wood is excluded from regulation as a*  
13 *hazardous waste under RCRA, arsenical-treated*  
14 *arsenically-treated wood may be disposed of as ordinary trash in*  
15 *unlined landfills.*

16 ~~(g)~~  
17 *(f)* (1) In 1984, after a six-year analysis of pentachlorophenol,  
18 the United States Environmental Protection Agency determined  
19 that the risks associated with the wood preservative uses of the  
20 chemical warrant cancellation of its registration, but for the lack  
21 of economically viable alternatives. Since 1984, economically  
22 viable alternatives for all of pentachlorophenol’s uses have been  
23 developed and made commercially available.

24 (2) The failure of the United States Environmental Protection  
25 Agency to act has exposed tens of thousands of workers daily to  
26 chemical wood preservatives that have debilitating effects on  
27 workers’ long-term health.

28 ~~(h)~~  
29 *(g)* Because of the large quantities of arsenically treated wood  
30 that have been, and will be, disposed of in solid waste landfills, the  
31 exemption of treated wood from the RCRA hazardous waste  
32 treatment requirements results in a major public health and  
33 environmental threat.

34 SEC. 2. Section 25143.1.5 of the Health and Safety Code is  
35 repealed.

36 SEC. 3. Article 9.45 (commencing with Section 25207.14) is  
37 added to Chapter 6.5 of Division 20 of the Health and Safety Code,  
38 to read:

## Article 9.45. Wood Preservatives

25207.14. For purposes of this article, the following definitions apply:

(a) “CCA” means chromated copper arsenate.

(b) “Penta” means pentachlorophenol.

(c) “Wood products” includes, but is not limited to, poles, crossarms, pilings, fence posts, lumber, support timbers, flume lumber, and cooling tower lumber.

(d) “Wood waste” means a wood product that is a waste.

25207.15. (a) On and after January 1, 2005, ~~no person may except as provided in Section 25207.17, a person may not use CCA, penta, or creosote or penta~~ for treating wood products or manufacture a wood product treated with CCA, ~~penta, or creosote or penta~~.

(b) On and after January 1, 2005, wood waste containing any measurable levels of CCA, ~~penta, or creosote or penta~~ is a hazardous waste for purposes of this chapter and any person disposing of wood waste containing any measurable levels of CCA, ~~penta, or creosote or penta~~ shall dispose of that wood waste pursuant to this chapter.

(c) A person may dispose of the wood waste specified in subdivision (b) in accordance with the regulations adopted by the ~~department pursuant to this chapter governing universal waste~~ department, in consultation with the California Integrated Waste Management Board and the State Water Resources Control Board, pursuant to subdivision (d).

(d) *The department shall adopt regulations pursuant to this section that require the wood waste subject to this article to be disposed of in a manner fully protective of human health and the environment.*

25207.16. *This article does not require a product containing CCA or penta to be removed before the end of that product’s existing lifespan, but when the product is replaced, the removed product shall be managed as a hazardous waste in accordance with this article. The replacement for that product may not contain CCA or penta.*

25207.17. *A local agency or state agency or department may petition the California Environmental Protection Agency for a waiver from the requirements of this article, which shall be valid*

1 *for five years from the date that the waiver is issued, if the*  
2 *California Environmental Protection Agency finds there is no*  
3 *economically viable alternative to the use of CCA or penta with*  
4 *regard to that product.*

5 SEC. 4. No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 the only costs that may be incurred by a local agency or school  
8 district will be incurred because this act creates a new crime or  
9 infraction, eliminates a crime or infraction, or changes the penalty  
10 for a crime or infraction, within the meaning of Section 17556 of  
11 the Government Code, or changes the definition of a crime within  
12 the meaning of Section 6 of Article XIII B of the California  
13 Constitution.

